

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IRON WORKERS LOCAL NO. 498 HEALTH)
AND WELFARE FUND and IRON WORKERS)
LOCAL NO. 498 PENSION FUND,)

Plaintiffs,)

v.)

INDUSTRIAL MECHANICAL)
CONTRACTORS OF IL, INC.)

Defendant.)

Case No. 13 CV 3053

Honorable Judge Gottschall

Magistrate Judge Keys

DEFENDANT'S ANSWER TO PLAINTIFFS' COMPLAINT

The Defendant, INDUSTRIAL MECHANICAL CONTRACTORS OF IL, INC., by its attorneys, Allocco, Miller & Cahill, P.C., answers Plaintiffs' Complaint as follows:

1. This action arises under Section 502 of the Employee Retirement Income Security Act (hereinafter referred to as "ERISA") and Section 301 of the Taft-Hartley Act. (29 U.S.C. §§1132 and 185). Jurisdiction is founded on the existence of questions arising thereunder.

ANSWER: Defendant admits the allegations in Paragraph 1.

2. The IRON WORKERS LOCAL NO. 498 HEALTH AND WELFARE FUND, and the IRON WORKERS LOCAL NO. 498 PENSION FUND, (hereinafter referred to as the "Trust Funds") receive contributions from numerous employers pursuant to Collective Bargaining Agreements between the employers and the IRON WORKERS LOCAL UNION NO. 498, (hereinafter referred to as the "Union").

ANSWER: Defendant admits the allegations in Paragraph 2.

3. The Trust Funds are multi-employer plans as defined under 29 U.S.C. § 1002.

ANSWER: Defendant admits the allegations in Paragraph 3.

4. The IRON WORKERS LOCAL NO. 498 HEALTH AND WELFARE FUND is administered at 1520 Kensington Road, Suite 200, Oak Brook, Illinois and venue is proper in the Northern District of Illinois.

ANSWER: Defendant admits the allegations in Paragraph 4.

5. INDUSTRIAL MECHANICAL CONTRACTORS OF IL, INC., (hereinafter referred to as "Defendant") is an employer engaged in an industry affecting commerce which entered into a Project Only Memorandum of Agreement attached as **Exhibit A** with the Union which binds the Defendant to the Collective Bargaining Agreement (hereinafter referred to as the "CBA"). The CBA binds the Defendant to the terms of the Trust Agreements which created the Trust Funds.

ANSWER: Defendant admits the allegations in Paragraph 5.

6. The CBA and Trust Agreements require the Defendant to submit monthly reports listing the hours worked by its bargaining unit employees (hereinafter referred to as "monthly contribution reports") and to make concurrent payment of contributions to the Trust Funds based upon the hours worked by said employees. In addition, the Defendant is required to make contributions to the Trust Funds measured by the hours worked by its subcontractors who are not signatory to a CBA with the Union.

ANSWER: Defendant admits the allegations in Paragraph 6.

7. Employers who do not timely pay fringe benefit contributions are also liable for liquidated damages, interest, reasonable attorney's fees, court costs, incurred in the collection process.

ANSWER: Defendant admits the allegations in Paragraph 7.

8. The Defendant breached the provisions of the CBA and Trust Agreements by failing to submit timely reports and contributions for the months of February 2013 and March 2013.

ANSWER: Defendant admits the allegations in Paragraph 8.

9. As a result of said breach, the Defendant is also liable to the plaintiffs for the following ancillary damages:

- a. attorney fees and costs pursuant to the CBA and 29 U.S.C. §1132(g)(2)(D); and either
- b. liquidated damages and interest pursuant to the CBA, Trust Agreements and 29 U.S.C. §1132(g)(2)(B); or
- c. double interest pursuant to E.R.I.S.A., 29 U.S.C. §1132(g)(2)(C).

ANSWER: Defendant admits the allegations in Paragraph 9.

Respectfully submitted,

**INDUSTRIAL MECHANICAL
CONTRACTORS OF IL, INC**

By: /s/ Todd A. Miller
One of Defendant's Attorneys

Todd A. Miller
Kathleen M. Cahill
ALLOCCO, MILLER & CAHILL, P.C.
3409 North Paulina
Chicago, Illinois 60657
Telephone: (773) 868-4841
Facsimile: (773) 529-2853
E-Mail: tam@alloccomiller.com

CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that he electronically filed the attached, Answer to Plaintiffs' Complaint, with the Clerk of the Court using the CM/ECF system on or before the hour of 5:00 p.m. this 21st day of June, 2013, which will send notice of such filings to the following:

Frank A. Marco
GREGORIO & ASSOCIATES
Two North LaSalle Street
Suite 1650
Chicago, IL 60606
(312) 263-2343
Email: fmarco@gregoriolaw.com

/s/ Todd A. Miller
One of Defendant's Attorneys

Todd A. Miller
Kathleen M. Cahill
ALLOCCO, MILLER & CAHILL, P.C.
3409 North Paulina
Chicago, Illinois 60657
Telephone: (773) 868-4841
Facsimile: (773) 529-2853
E-Mail: tam@alloccomiller.com